



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Applied Engineering Services, Inc.

File: B-256268.5

Date: February 22, 1995

William C. Reed for the protester,
William Weisberg, Esq., Barton, Mountain & Tolle, for
General Physics Corporation, an interested party,
Gregory H. Petkoff, Esq., and Martin C. O'Brien, Esq.,
Department of the Air Force,
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Protester's contention that agency improperly evaluated its proposal is denied where the record shows that the agency evaluated protester's proposal in accordance with the evaluation criteria announced in the solicitation, and reasonably supports the protester's lower overall technical rating.
2. Where a small business offeror's proposal is found to be weak under a particular technical evaluation factor (related to personnel) based on a comparative analysis of competing proposals, there is no requirement for referral to the Small Business Administration under certificate of competency the procedures.
3. Award to offeror submitting a higher-rated, higher-cost proposal is unobjectionable where request for proposals stated that technical considerations would be considered more important than cost, and the agency reasonably found that awardee's superior technical proposal was worth the higher cost.

DECISION

Applied Engineering Services, Inc. (AES) protests the award of a contract to GPS Technologies, Inc.¹ under request for

¹GPS Technologies has since award changed its name to the General Physics Corporation. For consistency, we refer to this firm as GPS throughout this decision.

proposals (RFP) No. F04611-93-R-0014, issued by the Department of the Air Force for technical support services at the Phillips Laboratory, Edwards Air Force Base (AFB), California. The protester argues that the agency improperly evaluated its proposal and that award to GPS at a higher cost than AES proposed was improper.

We deny the protest.

BACKGROUND

The RFP, issued July 19, 1993, contemplated the award of a cost-plus-award-fee, level-of-effort contract. The projected award date was October 1, with performance to continue for 5 years, through September 30, 1998. The required services include engineering support to assess existing experimental jet propulsion test facilities; development of specifications for design/redesign of facilities to meet the requirements of new projects undertaken at the laboratory; and inspection of other contractors' work on experimental facilities at the laboratory.²

Offerors were required to submit proposals divided into five volumes, as follows: volume I, technical; volume II, management; volume III, cost/price; volume IV, administrative; and volume V, past and present performance. The RFP provided detailed instructions as to the type of information to be included in each of the five volumes of the proposal and included sample formats for offerors to follow in preparing personnel resumes, proposed skill mix, subcontractor costs, and proposed costs.

Section M of the RFP explained that each offeror's proposal would be rated in the technical and management areas, which were considered to be of equal importance. The RFP listed "compliance with requirements" and "personnel qualifications" as general assessment criteria under the technical and management areas. As for specific assessment criteria, the RFP listed "understanding of requirements" under the technical area and "evidence of good management practices" under the management area. Within each of the technical and management areas the RFP also listed specific evaluation criteria consisting of items and factors.³

²The agency conducted the acquisition under the streamlined procedures set forth in Air Force Regulation 70-30 (1988).

³The technical area was divided into two items (a) rocket propulsion technology, and (b) facility assessment. The management area was divided into the following four
(continued...)

Proposals were to be evaluated by assigning a color/adjectival rating to each of the technical and management areas and to the items within each area, depicting how well the offeror's proposal met the evaluation standards and solicitation requirements.⁴ A proposal risk assessment would be conducted to rate the risks to the government (high, moderate, or low) associated with the offeror's proposed approach. A performance risk assessment would also be conducted to evaluate the probability of the offeror successfully accomplishing the proposed effort based on the firm's past and present performance history. The RFP stated that within each evaluation area, each of the three ratings (color/adjectival, proposal risk, and performance risk) would be given equal consideration in making an integrated source selection decision. The RFP stated that cost would also be assigned a performance risk rating, and that cost would be considered of lesser importance than the technical and management areas. Award was to be made to the responsible firm whose offer conforming to the solicitation was deemed most advantageous to the government.

Four firms submitted proposals by September 16, the extended closing date for receipt of proposals. A source selection evaluation team (SSET) rated proposals in accordance with the evaluation scheme set out in the RFP. The agency issued written clarification requests (CR), requested best and final offers (BAFO) from all four firms, and reevaluated proposals based on the responses to the CRs and BAFOs. Based on the results of that evaluation, the agency awarded the contract to GPS for a total cost of \$9,579,003, on January 14, 1994.

Subsequently, National Technical Systems and AES protested the award to our Office alleging, inter alia, that the agency had improperly evaluated the competing proposals and had failed to conduct meaningful discussions with the firms. In response, by letter dated March 24, the agency advised our Office that it would reopen discussions, request another round of BAFOs, reevaluate proposals, and if

³(...continued)

items (factors within each item shown in parenthesis): (a) program management (organizational approach, planning/scheduling, control, and cost); (b) management control (data management); (c) quality assurance; and (d) subcontracting. The items within each area were listed in descending order of importance. The factors within each item were of equal importance.

⁴The color/adjectival rating scheme was as follows: blue (exceptional); green (acceptable); yellow (marginal); and red (unacceptable).

warranted, reexamine its award decision, whereupon we dismissed the protests as academic.

Because the composition of the SSET had changed since the evaluation of initial proposals, the agency decided to reevaluate all four proposals before reopening discussions. As a result of that evaluation, the SSET rated GPS's proposal green (acceptable) in the technical area; blue (exceptional) in the management area; and assigned it a proposal risk rating of low overall. The SSET rated AES's proposal green (acceptable) in the technical area; yellow (marginal) in the management area; and assigned it an overall proposal risk rating of high. The agency developed CRs based on the results of this evaluation and submitted them to the four offerors.

Three of the original four offerors, including AES and GPS, responded to the agency's second request for CRs and BAFOs. The SSET reevaluated proposals based on those responses; a cost evaluation team reevaluated proposed costs; and the agency's proposal risk assessment group evaluated the offerors' overall performance risk. As a result of the reevaluation of proposals, the agency determined that GPS's proposal was most advantageous to the government, and reaffirmed its earlier decision to award the contract to GPS.

In a September 27 letter, the contracting officer informed the protester that the agency had awarded the contract to GPS. The contracting officer stated that although AES's proposal was acceptable, it had received an overall risk rating of "moderate." The contracting officer explained that AES's risk rating primarily reflected the agency's concerns over AES's failure to identify in its proposal support engineering personnel below the level of lead engineers and task managers. Following a debriefing by the agency, AES filed this protest with our Office.

PROTESTER'S CONTENTIONS

In its protest, AES argues that the "moderate" risk assessed its proposal is unreasonable and was the result of bias on the part of the agency. Although the protester concedes that it failed to identify or provide resumes for some of its proposed personnel, AES asserts that it was not required to do so. The protester further contends that since AES is a small business and since it submitted an acceptable proposal, any concerns the agency had over its proposed personnel should have been referred to the Small Business Administration (SBA) under the certificate of competency (COC) procedures. The protester also contends that the award to GPS at a higher cost than AES proposed was improper.

DISCUSSION

Evaluation of AES's Proposal

The evaluation of technical proposals is the function of the contracting agency; our review of an allegedly improper evaluation is limited to determining whether the evaluation was reasonable and consistent with the stated evaluation criteria. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454. Mere disagreement with the agency's evaluation does not render the evaluation unreasonable. Id. Here, we find that the evaluation of AES's proposal was unobjectionable,

In response to the protest, the Air Force submitted a complete agency report in support of the evaluation of the competing proposals and the award decision. The agency's response includes the SSET evaluation documents; comparison reports analyzing the strengths and weaknesses in the offerors' proposals; and the contracting officer's statement explaining in detail the reevaluation process, the basis for the agency's affirmance of the award decision, and specifically addressing each of the protester's allegations. In its brief, 1-page submission commenting on the agency's voluminous report, AES does not specifically rebut any aspect of the evaluation of its proposal. Instead, AES contends that the contract was "predestined" for GPS.

In our view, the record reasonably supports the evaluation of AES's proposal and the award decision. Section L of the RFP provided very specific instructions to offerors regarding the type of information required to be submitted with proposals. For example, the following is an excerpt from section L-III of the RFP regarding the information to be contained within volume I, the technical proposal:

"The proposal should be prepared simply and economically, providing straightforward concise delineation of capabilities to perform satisfactorily the contract being sought. . . .

"(a) The proposal should contain an outline of proposed service, method of approach to the service, and any other information considered pertinent to the service. The proposal should not merely offer to conduct the service in accordance with [s]ection C, but should outline the actual service proposed as specifically as possible.

"(b) General experience and background of offeror on similar projects should be included [within the technical proposal]. . . ."

This section of the RFP further suggested that offerors should submit additional information in support of their proposals such as resumes of all management, supervisory, key technical and professional personnel assigned to the technical area to assist the agency in evaluating the offerors understanding of the requirements.

Section L-III.b(2), entitled "FORMAT AND SPECIFIC CONTENT," described the specific type of information that was to be contained in volume I. The RFP stressed that the information called for in this section was to "indicate an understanding of the technical requirements," and that offerors were to address each item listed in this section in terms of meeting the RFP's statement of work requirements, and their understanding of the specific technical requirements and complexities of the RFP. The information was to be presented "in as much detail as possible" and contain, at a minimum, certain types of information listed under this section, including:

"g. Specifically address how you would plan and perform a task to include what resources you expect to use, and where those resources will be obtained. Resources means, in this case, manpower, technical information, cost information, and policy information." (Emphasis added.)

With respect to volume II, the management proposal, section L-III.c of the RFP contained detailed instructions and examples of the documentation required of offerors to support their proposal's structure. Specifically, this section required offerors to provide resumes of all management, supervisory, key personnel, and professionals assigned to the management area and to demonstrate that qualified personnel would be available when needed.

Section M of the RFP stated that personnel qualifications was a general assessment criterion that would be used to assess the offerors' understanding of the need for the specific assignment of management/technical personnel with the appropriate experience, educational background, and record of past accomplishments appropriate for the scope of work. Thus, the RFP's clear instructions should have alerted all offerors, including AES, as to the importance of providing detailed information particularly with respect to proposed personnel, and the significance that information would have in the evaluation process.

The protester's proposal was acceptable overall, but was downgraded primarily under the program management item within the management area, where its proposal received a rating of yellow (marginal)/high risk. The SSET found that AES proposed two program managers with poorly defined roles.

The evaluators were concerned that all of the civil and electrical engineering capabilities were possessed by only one of those two individuals, raising concern that one person might not be able to fulfill all of the responsibilities associated with both of those positions. The evaluators were also concerned that all of AES's proposed "core employees" were full-time employees of another firm in a state different from where the laboratory is located. The SSET concluded that the physical location and employment status of those individuals created an unacceptable risk to the government.

Also, of the 22 employees whom AES proposed to perform the contract, 13 support engineers were to be new hires and AES provided no resumes or job summaries for those individuals with its proposal. Because of the complex nature of the services to be provided under the contemplated contract, the agency was concerned that AES had no plans to subcontract any of the work and that most, if not all, of the design and engineering work would be performed at the contractor's home office in Idaho, not at Edwards AFB in California. The SSET concluded that AES's proposal to perform all of the engineering work in-house in Idaho would adversely impact cost control and scheduling of work, and would present a high risk to the government.

The evaluators generated 14 separate CRs reflecting each of the SSET's concerns, submitted them to AES, and requested a second BAFO from the firm. Each CR identified the evaluation area at issue and referenced the relevant area in AES's proposal. For example, two separate CRs (AES-MGT-CR8a and AES-MGT-CR10a), identified the SSET's concern over AES's proposing technical employees who were employed by another firm, and expressed the evaluators' concern over the fact that of the 22 individuals AES proposed to perform the contract, 13 of them were new hires. The CRs made it clear that the agency viewed this approach as "risky."

By letter dated August 4, 1994, AES responded to the CRs and submitted a second BAFO, and the SSET reevaluated AES's proposal based on its responses to the CRs. As a result of AES's responses to this round of CRs, the SSET raised the ratings assigned AES's proposal from yellow (marginal) to green (acceptable) in the management area, and improved the overall proposal risk rating from high to moderate. In the final analysis, however, the record shows that AES's responses to the CRs did not overcome the SSET's concern over AES's failure to provide any information concerning the second tier of support engineers, most of whom would be new hires. The SSET was particularly concerned that AES had stated that the firm would require a minimum of a 1-month start-up notice in order to staff the support personnel positions (with personnel and qualifications

unidentified in its proposal). This weakness caused the SSET to downgrade AES's proposal risk rating to moderate under the technical area.

In view of the emphasis throughout the RFP for offerors to provide detailed information in support of their proposed solution, including personnel and resources, and given AES's failure to provide any job resumes or qualifications regarding what the agency considered to be "core" support employees, we think that it was reasonable for the SSET to downgrade AES's proposal under the technical area. Although AES's responses to the CRs alleviated some of the SSET's other concerns with AES's approach, thus raising AES's proposal rating in the management area from yellow (marginal) to green (acceptable), AES's responses to the CRs did not overcome the SSET's concerns with respect to the support engineers, thus, reasonably raising its overall risk rating to only "moderate." Based on our review of the record we find the agency's evaluation to be reasonable and consistent with the RFP's evaluation criteria, especially since AES has failed to specifically rebut any aspect of the agency's response to its protest. See Mentor Technologies, Inc., B-258009, Nov. 17, 1994, 94-2 CPD ¶ 195.⁵

Referral to SBA

AES also complains that the agency should have referred the rejection of the firm's proposal to the SBA because the agency's technical evaluation was in essence a responsibility determination. A contracting agency may use traditional responsibility criteria--that is, matters relating to an offeror's ability to perform the contract such as personnel availability and experience--as technical evaluation factors if the agency's needs warrant a comparative assessment of proposals in those areas. See, e.g., Sanford and Sons Co., 67 Comp. Gen. 612 (1988), 88-2 CPD ¶ 266. Clearly, a comparative assessment of the merits

⁵AES's allegation that the evaluation of its proposal and the selection decision were the result of bias is without merit. Where a protester alleges bias on the part of procurement officials, the protester must prove that the officials intended to harm the protester. See Sierra Technology and Resources, Inc., B-243777.3, May 19, 1992, 92-1 CPD ¶ 450. In the absence of such proof, contracting officials are presumed to act in good faith. Id. We have carefully reviewed the record and, as explained fully above, find that the agency reasonably evaluated AES's proposal in accordance with the RFP's evaluation criteria. Except for its blanket statement, the protester has not provided any evidence or arguments in support of its allegation that the evaluation and selection decision here reflects bias.

of competing proposals with respect to personnel is warranted where, as here, the agency is procuring sophisticated technical support services. In such cases, since the agency is contracting for the services themselves, the relative quality of the services offered, as reflected in the personnel proposed, is a legitimate and crucial factor in the agency's technical evaluation. Accordingly, the agency's determination that AES's proposal was deficient with respect to its proposed personnel because AES failed to provide any job resumes or qualifications for support engineers, did not constitute a nonresponsibility determination which required referral to the SBA. See Advanced Resources Int'l, Inc., B-249679, Nov. 18, 1992, 92-2 CPD ¶ 357, aff'd, B-249679.2, Apr. 29, 1993, 93-1 CPD ¶ 348.

Award to GPS


AES's contention that award to GPS at a higher cost than AES proposed was improper, is without merit.⁶ In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the RFP so specifies. Henry H. Hackett & Sons, B-237181, Feb. 1, 1990, 90-1 CPD ¶ 136. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Awards to offerors with higher technical scores and higher costs are proper so long as the result is consistent with the evaluation criteria and the procuring agency reasonably determines that the technical difference is worth the cost premium. Bendix Field Eng'g Corp., B-241156, Jan. 16, 1991, 91-1 CPD ¶ 44.

Here, we find that the agency had a reasonable basis to award to GPS at a higher cost. The services to be provided are highly technical and specialized in nature, the agency found GPS's proposal to be technically superior to AES's, and technical concerns were more important than cost. Under

⁶GPS's evaluated costs were approximately 17 percent higher than AES's.

these circumstances, the agency's determination that GPS's proposal was most advantageous to the government is unobjectionable. See A-Enters., Inc., B-255318, Feb. 18, 1994, 94-1 CPD ¶ 133.

The protest is denied.


Robert P. Murphy
General Counsel